

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2008-0076-AIR-E TCEQ ID: RN104372990 CASE NO.: 24950**  
**RESPONDENT NAME: KM AVIATION, INC.**

Page 1 of 2

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input checked="" type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 5110 Voyager Drive, Dallas, Dallas County</p> <p><b>TYPE OF OPERATION:</b> aerospace surface coating facility</p> <p><b>SMALL BUSINESS:</b>    <input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on April 28, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b></p> <p style="margin-left: 20px;"><b>TCEQ Attorney:</b> Ms. Anna M. Cox, Litigation Division, MC 175, (512) 239-0974 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873</p> <p style="margin-left: 20px;"><b>TCEQ Enforcement Coordinator:</b> Mr. Bryan Elliot, Air Enforcement Section, MC 149, (512) 239-6162</p> <p style="margin-left: 20px;"><b>TCEQ Regional Contact:</b> Ms. Alyssa Taylor, DFW Regional Office, MC R-4, (817) 588-5828</p> <p style="margin-left: 20px;"><b>Respondent:</b> Mr. Kevin Miller, KM Aviation, Inc. 5501 Airport Drive, Denison, Texas 75020</p> <p style="margin-left: 20px;"><b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter.</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p><b>Date of Complaints Relating to this Case:</b> None</p> <p><b>Dates of Investigation Relating to this Case:</b> July 3, 2007 (Record Review)</p> <p><b>Date of NOE Relating to this Case:</b> January 23, 2008</p> <p><b>Background Facts:</b> The Executive Director filed the EDPRP in the TCEQ Chief Clerk's office on January 23, 2008. The EDPRP was sent via certified mail, return receipt requested, and via first class mail. According to the return receipt "green card" the Respondent received notice of the EDPRP on January 28, 2008. The Respondent has not filed an answer or requested a hearing</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p><b>AIR:</b> Failed to obtain authorization for an aircraft spray painting booth [TCEQ Agreed Order Docket No. 2005-0542-AIR-E; TEX. HEALTH &amp; SAFETY CODE §§ 382.085(b) and 382.0518(a); and 30 TEX. ADMIN. CODE § 116.110(a)].</p>	<p><b>Total Assessed:</b> \$30,000</p> <p><b>Total Deferred:</b> \$0</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Due to General Revenue:</b> \$30,000</p> <p>The Respondent has not actually paid any of the assessed penalty, but will be required to do so under the terms of the Order.</p> <p><b>Site Compliance History Classification</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Action(s) Taken</b></p> <p>The Executive Director recognizes that the Respondent vacated the Site on or about October 27, 2007.</p>



Policy Revision 2 (September 2002)

## Penalty Calculation Worksheet (PCW)

PCW Revision September 19, 2007

TCEQ

DATES	Assigned	28-Aug-2007	Screening	21-Sep-2007	EPA Due	
	PCW	21-Sep-2007				

## RESPONDENT/FACILITY INFORMATION

Respondent	KM Aviation, Inc.		
Reg. Ent. Ref. No.	RN104372990		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

## CASE INFORMATION

Enf./Case ID No.	24950	No. of Violations	1
Docket No.	2008-0076-AIR-E	Order Type	Findings
Media Program(s)	Air	Enf. Coordinator	Bryan Elliott
Multi-Media		EC's Team	EnforcementTeam 4
Admin. Penalty \$	Limit Minimum	\$0	Maximum
			\$10,000

## Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$24,000
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## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	25% Enhancement	Subtotals 2, 3, & 7	\$6,000
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Notes: The penalty was enhanced due to one NOV for similar violations and previous 1660-style order.

Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes: The Respondent does not meet the good faith criteria.

0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$148
Approx. Cost of Compliance	\$1,500

\*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$30,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount	\$30,000
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$30,000
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DEFERRAL	0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$30,000
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Screening Date 21-Sep-2007

Docket No. 2008-0076-AIR-E

PCW

Respondent KM Aviation, Inc.

Policy Revision 2 (September 2002)

Case ID No. 24950

PCW Revision September 19, 2007

Reg. Ent. Reference No. RN104372990

Media [Statute] Air

Enf. Coordinator Bryan Elliott

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 25%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

The penalty was enhanced due to one NOV for similar violations and previous 1660-style order.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 25%

<b>Screening Date</b> 21-Sep-2007 <b>Respondent</b> KM Aviation, Inc. <b>Case ID No.</b> 24950 <b>Reg. Ent. Reference No.</b> RN104372990 <b>Media [Statute]</b> Air <b>Enf. Coordinator</b> Bryan Elliott <b>Violation Number</b> <input type="text" value="1"/>	<b>Docket No.</b> 2008-0076-AIR-E <div style="text-align: right;"><b>PCW</b></div> <div style="text-align: right; font-size: small;"> <i>Policy Revision 2 (September 2002)</i>  <i>PCW Revision September 19, 2007</i> </div>																			
<b>Rule Cite(s)</b> 30 Tex. Admin. Code § 116.110(a), Tex. Health & Safety Code §§ 382.085(b) and 382.0518(a), and TCEQ Agreed Order Docket No. 2005-0542-AIR-E																				
<b>Violation Description</b> Failed to comply with Ordering Provisions Nos. 2.a-2.d. of TCEQ Agreed Order Docket No. 2005-0542-AIR-E. Specifically, the Respondent failed to obtain authorization for an aircraft spray painting booth.																				
<b>Base Penalty</b> <input style="width: 100px;" type="text" value="\$10,000"/>																				
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>																				
<b>OR</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 20%;">Major</th> <th style="width: 20%;">Moderate</th> <th style="width: 20%;">Minor</th> <th style="width: 30%;"></th> </tr> </thead> <tbody> <tr> <td><b>Release</b></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td rowspan="2"><b>Percent</b> <input style="width: 50px;" type="text" value="0%"/></td> </tr> <tr> <td>Potential</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </tbody> </table>		Major	Moderate	Minor		<b>Release</b>					Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input style="width: 50px;" type="text" value="0%"/>	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
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<b>Matrix Notes</b>	<div style="border: 1px solid black; padding: 10px; min-height: 40px;">           100% of the rule requirement was not met.         </div>																			
<b>Adjustment</b> <input style="width: 100px;" type="text" value="\$9,000"/>																				
<input style="width: 100px;" type="text" value="\$1,000"/>																				
<b>Violation Events</b>																				
<table style="width: 100%;"> <tr> <td style="width: 40%;">Number of Violation Events <input style="width: 50px;" type="text" value="24"/></td> <td style="width: 20%; text-align: center;"><input style="width: 50px;" type="text" value="718"/></td> <td style="width: 40%;">Number of violation days</td> </tr> </table>		Number of Violation Events <input style="width: 50px;" type="text" value="24"/>	<input style="width: 50px;" type="text" value="718"/>	Number of violation days																
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<b>Violation Base Penalty</b> <input style="width: 100px;" type="text" value="\$24,000"/>																				
<div style="border: 1px solid black; padding: 10px;">           Twenty-four monthly events are recommended from the effective date (November 6, 2005) of the order to the date the site was documented to be vacated (October 25, 2007).         </div>																				
<b>Economic Benefit (EB) for this violation</b>																				
<table style="width: 100%;"> <tr> <td style="width: 50%;">Estimated EB Amount <input style="width: 100px;" type="text" value="\$148"/></td> <td style="width: 50%; text-align: right;">Violation Final Penalty Total <input style="width: 100px;" type="text" value="\$30,000"/></td> </tr> <tr> <td colspan="2" style="text-align: right;">This violation Final Assessed Penalty (adjusted for limits) <input style="width: 100px;" type="text" value="\$30,000"/></td> </tr> </table>		Estimated EB Amount <input style="width: 100px;" type="text" value="\$148"/>	Violation Final Penalty Total <input style="width: 100px;" type="text" value="\$30,000"/>	This violation Final Assessed Penalty (adjusted for limits) <input style="width: 100px;" type="text" value="\$30,000"/>																
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<b>Statutory Limit Test</b>																				

**Economic Benefit Worksheet**

Respondent KM Aviation, Inc.  
Case ID No. 24950  
Reg. Ent. Reference No. RN104372990  
Media Air  
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs	\$1,500	6-Nov-2005	25-Oct-2007	2.0	\$148	n/a	\$148
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to submit a permit application. The date required is the effective date of TCEQ Agreed Order Docket No. 2005-0542-AIR-E and the final date is the date the site was documented to have been vacated.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$148

## Compliance History

Customer/Respondent/Owner-Operator: CN602688806 KM Aviation, Inc. Classification: Average Rating: 29.67  
Regulated Entity: RN104372990 KM AVIATION Classification: Average Site Rating: 29.67  
ID Number(s): AIR NEW SOURCE PERMITS REGISTRATION 78318  
Location: 5110 VOYAGER DR, DALLAS, TX, 75237 Rating Date: 9/1/2007 Repeat Violator: NO  
TCEQ Region: REGION 04 - DFW METROPLEX  
Date Compliance History Prepared: September 19, 2007  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: September 19, 2002 to September 19, 2007  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Bryan Elliott Phone: 239-6162

### Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

Effective Date: 11/06/2005 ADMINORDER 2005-0542-AIR-E  
Classification: Major  
Citation: 30 TAC Chapter 116, SubChapter B 116.110(a)(G)  
5C THC Chapter 382, SubChapter A 382.0518(a)  
5C THC Chapter 382, SubChapter A 382.085(b)  
Description: Failure to obtain authorization for the aircraft spray painting booth

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 03/03/2005 (351136)

2 08/20/2007 (568144)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 08/30/2004 (292552)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.110(a)(4)

Description: Failure of a facility to satisfy the requirements of a permit by rule or standard exemption.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.110(a)(4)

Description: Failure of a facility to satisfy the requirements of a permit by rule or standard exemption.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.110(a)(4)

Description: Failure of a facility to satisfy the requirements of a permit by rule or standard exemption.

- F. Environmental audits.

N/A

- G. Type of environmental management systems (EMSs).

N/A

- H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
KM AVIATION, INC.;  
RN104372990**

§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER DOCKET NO. 2008-0076-AIR-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is KM Aviation, Inc. ("KM").

The Commission makes the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. KM owned and operated an aerospace surface coating facility located at 5110 Voyager Drive, Dallas, Dallas County, Texas (the "Site").
2. The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. During a record review conducted on or about July 3, 2007, the TCEQ documented that KM violated TEX. HEALTH & SAFETY CODE § 382.085(b) and 382.0518(a), 30 TEX. ADMIN. CODE § 116.110(a), and TCEQ Agreed Order Docket No. 2005-0542-AIR-E by failing to comply with Ordering Provisions Nos. 2.a.-2.d. of TCEQ Agreed Order Docket No. 2005-0542-AIR-E. Specifically, the Respondent failed to obtain authorization for an aircraft spray painting booth.
4. KM received notice of the violation on or about January 28, 2008.
5. The Executive Director recognizes that KM vacated the Site on or about October 27, 2007.

6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of KM Aviation, Inc." (the "EDPRP") in the TCEQ Chief Clerk's office on January 23, 2008.
7. By letter dated January 23, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served KM with notice of the EDPRP. According to the return receipt "green card", KM received notice of the EDPRP on January 28, 2008, as evidenced by the signature on the card.
8. More than 20 days have elapsed since KM received notice of the EDPRP, provided by the Executive Director. KM failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

#### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, KM is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3., KM failed to comply with Ordering Provisions Nos. 2.a.-2.d. of TCEQ Agreed Order Docket No. 2005-0542-AIR-E, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b) and 382.0518(a), and 30 TEX. ADMIN. CODE § 116.110(a).
3. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director has timely served KM with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 8, KM has failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against KM and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against KM for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.

6. An administrative penalty in the amount of thirty thousand dollars (\$30,000.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

### ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. KM is assessed an administrative penalty in the amount of thirty thousand dollars (\$30,000.00) for violations of TEX. HEALTH & SAFETY CODE § 382.085(b) and 382.0518(a), TCEQ Agreed Order Docket No. 2005-0542-AIR-E, and rules of the TCEQ. The payment of this administrative penalty and KM's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: KM Aviation, Inc.; Docket No. 2008-0076-AIR-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. All relief not expressly granted in this Order is denied.
3. The provisions of this Order shall apply to and be binding upon KM.
4. If KM fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, KM's failure to comply is not a violation of this Order. KM shall have the burden of establishing to the Executive Director's satisfaction that such an event has

occurred. KM shall notify the Executive Director within seven days after KM becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by KM shall be made in writing to the Executive Director. Extensions are not effective until KM receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to KM if the Executive Director determines that KM has not complied with one or more of the terms or conditions in this Order.
7. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
8. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF SHAWN A. SLACK**

STATE OF TEXAS           §  
                                     §  
COUNTY OF TRAVIS       §

“My name is Shawn A. Slack. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of KM Aviation, Inc.” (the “EDPRP”) with the Office of the Chief Clerk on January 23, 2008.

I sent the EDPRP to KM at its last known address on January 23, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, KM received notice of the EDPRP on January 28, 2008, as evidenced by the signature on the card.

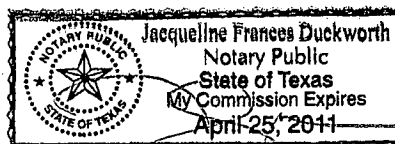
More than 20 days have elapsed since KM received notice of the EDPRP. KM failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference”.



Shawn A. Slack  
Attorney  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Shawn A. Slack, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 29<sup>th</sup> day of February A.D., 2008.



Notary Stamp

Notary Signature 